

REMARKS

INTRODUCTION:

Claims 1-5, 19, 20, 22, 23 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakaya et al. (USPN 6,172,458) in view of McKenna et al. (USPN 5,059,148).

Claims 6-9 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakaya et al. (USPN 6,172,458) in view of McKenna et al. (USPN 5,059,148) and further in view of Taniguchi et al. (USPN 5,239,228).

Claims 21 and 24 were objected to, but would be allowed if suitably rewritten.

In accordance with the foregoing, claims 21 and 24 have been amended. Claims 1-28 are pending and under consideration.

REJECTION UNDER 35 U.S.C. §103:

A. Claims 1-5, 19, 20, 22, 23, and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nakaya et al., U.S. Patent No. 6,172,458 (hereafter referenced as Nakaya et al.) in view of McKenna et al., U.S. Patent No. 5,059,148 (hereafter referenced as McKenna et al. '148). This rejection is respectfully traversed.

It is respectfully noted that since McKenna et al. '148 was filed on December 21, 1987 and issued on March 7, 1989, the technology in the McKenna et al. '148 invention was readily available to the inventors for Nakaya et al., which was filed on April 27, 1998 and issued on January 9, 2001, for a period of slightly over nine years prior to the Nakaya et al. patent application filing. Thus, since the inventors for Nakaya et al. are held to be skilled in the art, the inventors for Nakaya et al. are deemed to have been aware of the invention of McKenna et al. '148 and had every opportunity to utilize the features of the McKenna et al. '148 invention in the Nakaya et al. invention. However, the inventors for the Nakaya et al. invention did not do so. Had it been obvious to combine the invention of McKenna et al. '148 with the invention of Nakaya et al., it is respectfully submitted that the inventors for the Nakaya et al. invention would have done so.

Also, with respect to claims 1 and 22, McKenna et al. '148 is not related to an organic EL element, and only discloses two fill holes for filling protective liquid. In contrast, the present invention is related to an organic EL device and has a through hole for discharging air and

controlling the pressure in the inner part of the organic EL device. Accordingly, the filling holds of McKenna et al. '148 are different from the through hold of the present invention. Also, although Nakaya et al. is related to an organic EL device, and cite an encapsulating layer, Nakaya et al. does not disclose that the encapsulating layer is a flat panel. Accordingly, it is respectfully submitted that it would have been unobvious to one of ordinary skill in the art at the time of the present invention to modify an inorganic EL device using organic EL elements. In addition, the McKenna et al. '148 reference is different from the present invention for many of the same reasons that the McKenna et al. '931 reference (which was cited in the Office Action mailed December 4, 2002) is different from the present invention (see Amendment filed February 26, 2003).

Since claims 1 and 22 are deemed to be patentable under 35 U.S.C. §103(a) over Nakaya et al., U.S. Patent No. 6,172, in view of McKenna et al., U.S. Patent No. 5,059,148, claims 2-5, 19, 20, 23 and 25, which depend therefrom, are also deemed to be patentable for at least the same reasons that claims 1 and 22 are patentable under 35 U.S.C. §103(a) over Nakaya et al., U.S. Patent No. 6,172, in view of McKenna et al., U.S. Patent No. 5,059,148.

In addition, it is respectfully submitted that the courts have held that the Examiner may not suggest modifying references using the present invention as a template absent a suggestion of the desirability of the modification in the prior art. *In re Fitch*, 23 U.S.P.Q.2d 1780, Fed Cir. 1992. Something in the prior art as a whole must suggest the desirability, and thus, the obviousness, of making the combination. *Alco Standard Corp. v. Tennessee Valley Authority*, 808 F. 2d 1490, 1 U.S.P.Q. 2d 1337 (Fed. Cir. 1986). When a rejection depends on a combination of prior art references, there must be some teaching, suggestion or motivation to combine the references. *In re Geiger*, 815 F.2d 686, 688 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987).

Thus, it is respectfully submitted that there is no teaching or suggestion of combining Nakaya et al. with McKenna et al. and the claims are deemed to be non-obvious in view of each of the cited references alone, and claims 1-5, 19, 20, 22, 23, and 25 are patentable under 35 U.S.C. §103(a) over Nakaya et al., U.S. Patent No. 6,172,458 in view of McKenna et al., U.S. Patent No. 5,059,148.

B. Claims 6-9 and 26-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nakaya et al. and McKenna et al. as applied to claim 1 above, and further in view of Taniguchi et al., U.S. Patent No. 5,239,228. This rejection is respectfully traversed.

It is respectfully submitted that there is no teaching of combining Nakaya et al. with McKenna et al. (see arguments above). Further, along the line of reasoning presented above, Taniguchi et al. was filed on July 1, 1991 and issued August 23, 1993, approximately six and a half years before the filing of Nakaya et al. If it had been obvious to combine Taniguchi et al. and McKenna et al. with Nakaya et al., the inventors of Nakaya et al. would have done so. However, the inventors of Nakaya et al. did not do so. Thus, it is respectfully submitted that there is no showing that it would have been obvious to combine the cited references.

In addition, Taniguchi et al. is related to an inorganic EL device, and the inorganic EL device generates an electrical problem when moisture contacts the inorganic element. Therefore, a moisture absorption agent of Taniguchi et al., an inorganic EL device, prevents an electrical problem by absorbing moisture. In contrast, in an organic EL device, air as well as moisture cause deterioration of the EL device due to hydrogen or oxygen. Accordingly, not only a moisture absorber, but also an inert medium, are needed in an organic EL device, and components of the inorganic EL device are different from those of an organic EL device. Thus, although Nakaya et al. is related to an organic EL device, it would not have been obvious to one of ordinary skill in the art to modify an inorganic EL device by using organic EL elements.

Claims 6-9 depend from claim 1, and are deemed to be allowable for at least the reasons that claim 1 is allowable (see arguments above). Thus, claims 6-9 are non-obvious in view of each of the three cited references alone. Claims 26-28 depend from claim 22, and are deemed to be allowable for at least the reasons that claim 22 is allowable (see arguments above). Thus, claims 26-28 are non-obvious in view of each of the three cited references alone.

Since there is no teaching or suggestion of combining of the three cited references and the claims are deemed to be non-obvious in view of each of the three cited references alone, claims 6-9 and 26-28 are deemed to be allowable under 35 U.S.C. §103(a) over Nakaya et al. and McKenna et al. as applied to claim 1 above, and further in view of Taniguchi et al., U.S. Patent No. 5,239,228.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Serial No. 10/067,818

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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